

**31A-6b-101. Title.**

This chapter is known as the "Guaranteed Asset Protection Waiver Act."

Enacted by Chapter 274, 2010 General Session

**31A-6b-102. Definitions.**

(1) This section defines a term only for purposes of this chapter. A term defined in this section is not required to be used in a guaranteed asset protection waiver.

(2) For purposes of this chapter:

(a) "Administrative functions" includes providing:

- (i) document development, processing, and management;
- (ii) data processing and support;
- (iii) compliance services;
- (iv) waiver fee processing;
- (v) benefit determination;
- (vi) technology support; or
- (vii) personnel support.

(b) "Administrator" means a person who provides administrative functions related to a guaranteed asset protection waiver.

(c) "Borrower" means a person who under a finance agreement is:

- (i) a debtor;
- (ii) a retail buyer; or
- (iii) a lessee.

(d) "Creditor" means a person who is:

- (i) a lender in a loan or credit transaction;
- (ii) a retail seller of a vehicle that provides credit to a retail buyer of the vehicle;
- (iii) a lessor in a lease transaction;
- (iv) a seller in a commercial retail installment transaction; or
- (v) an assignee of a person listed in this Subsection (2)(d) to whom a credit

obligation is payable.

(e) "Finance agreement" means one or more of the following for the purchase or lease of a vehicle:

- (i) a loan;
- (ii) a retail installment sales contract; or
- (iii) a lease.

(f) "Guaranteed asset protection waiver" means a contract for a separate charge:

(i) under which a creditor agrees to waive all or part of the amounts due on a borrower's finance agreement if a vehicle is subject to:

- (A) a total physical damage loss; or
- (B) unrecovered theft; and

(ii) that is made part of a finance agreement, even if the guaranteed asset protection waiver is stated in a separate addendum to the finance agreement.

(g) "Preliminary period" means a time period that:

(i) begins the day on which a guaranteed asset protection waiver becomes effective; and

(ii) ends the last day on which a borrower may cancel the guaranteed asset protection waiver with a full refund if no benefits have been provided.

(h) "Restricted account" means the Guaranteed Asset Protection Waiver Restricted Account created in Section 31A-6b-204.

(i) (i) "Vehicle" means a vehicle that is:

(A) self propelled or towed; and

(B) designed for personal or commercial use.

(ii) "Vehicle" includes:

(A) an automobile;

(B) a truck;

(C) a motorcycle;

(D) a recreational vehicle;

(E) an all terrain vehicle;

(F) a snowmobile;

(G) a camper;

(H) a boat;

(I) a personal watercraft; or

(J) a trailer for a motorcycle, boat, camper, or personal watercraft.

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**31A-6b-103. Relationship to title -- Scope -- Exemptions.**

(1) A guaranteed asset protection waiver:

(a) is not an insurance contract; and

(b) is not considered a debt cancellation or debt suspension contract for purposes of Section 31A-21-109.

(2) A guaranteed asset protection waiver is exempt from the provisions of this title other than this chapter, except to the extent otherwise provided in this chapter.

(3) This chapter does not apply to:

(a) an insurance contract offered by an insurer under this title; or

(b) a debt cancellation or debt suspension contract that:

(i) is not a guaranteed asset protection waiver; and

(ii) is offered in compliance with:

(A) 12 C.F.R. Part 37;

(B) 12 C.F.R. Part 721;

(C) other federal law; or

(D) Section 31A-21-109.

(4) A person required to be licensed or registered in accordance with this chapter may not be required to be licensed under another provision of this title for engaging in an act regulated by this chapter.

(5) A guaranteed asset protection waiver offered in connection with a loan, lease, or retail installment sale associated with a commercial vehicle transaction is not subject to this title.

(6) The following are exempt from this chapter:

(a) a bank, as defined in Section 7-1-103;

(b) a credit union, as defined in Section 7-1-103;

- (c) an industrial bank, as defined in Section 7-1-103;
- (d) a savings and loan association, as defined in Section 7-1-103; or
- (e) a subsidiary of an entity described in Subsections (6)(a) through (d).

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**31A-6b-104. Severability.**

If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

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**31A-6b-201. Persons who may provide a guaranteed asset protection waiver -- Requirement to be licensed or registered.**

(1) Except as provided in Subsection (2), on and after July 1, 2010, a person may not sell, offer to sell, or otherwise provide a guaranteed asset protection waiver to a borrower in this state unless the person:

- (a) (i) is:
  - (A) a creditor; or
  - (B) an administrator; and
- (ii) is registered in accordance with this part; or
- (b) (i) is an individual who sells vehicles at retail; and
- (ii) holds a limited line producer license in accordance with Section

31A-23a-103.

(2) (a) Subject to the other provisions of this Subsection (2), an entity retail seller of a vehicle may sell, offer to sell, or otherwise provide a guaranteed asset protection waiver to a borrower without being registered under this chapter if the retail seller assigns finance agreements within 90 days.

(b) The commissioner may assess each retail seller described in Subsection (2)(a) that is located in this state an annual assessment in accordance with this Subsection (2).

(c) The commissioner may assess an annual assessment under this section only if the fees received by the commissioner under Section 31A-6b-202 do not equal or exceed \$100,000.

(d) The commissioner shall determine the amount of the annual assessment under this section in accordance with Section 31A-3-103, except that:

- (i) the annual assessment may not exceed \$50; and
- (ii) the commissioner may not impose an amount that would reasonably be expected to result in the commissioner receiving in excess of \$100,000 in a fiscal year from the aggregate of:

- (A) the fees received under Section 31A-6b-202; and
- (B) the annual assessments under this section.

(e) The commissioner shall deposit an annual assessment collected under this section into the restricted account.

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**31A-6b-202. Registration process -- Annual fee.**

(1) If a person is required to register under Section 31A-6b-201, to register the person shall submit to the commissioner:

- (a) an application for registration;
- (b) a copy of any guaranteed asset protection waiver that the person will issue, market, sell, offer to sell, or otherwise provide in this state; and
- (c) a registration fee established by the commissioner in accordance with Section 31A-3-103, except that the registration fee may not exceed \$1,000.

(2) (a) On and after July 1, 2011, a person registered under this title shall pay to the commissioner an annual fee:

- (i) by no later than July 1 of each year after the day on which the person registers; and
- (ii) established by the commissioner in accordance with Section 31A-3-103, except that the annual fee may not exceed \$1,000.

(b) If a person fails to pay the annual fee required under this Subsection (2) by October 1, the person's registration expires.

(3) The commissioner shall deposit a fee collected under this section into the restricted account.

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**31A-6b-203. Filing new or changed guaranteed asset protection waiver.**

A person required to be registered under Section 31A-6b-201 shall submit to the commissioner at least 30 days before the day on which the person issues, markets, sells, offers to sell, or otherwise provides a guaranteed asset protection waiver in this state:

- (1) a change to a term of a guaranteed asset protection waiver previously submitted to the commissioner under this chapter; or
- (2) a guaranteed asset protection waiver that has not previously been submitted to the commissioner under this chapter.

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**31A-6b-204. Guaranteed Asset Protection Waiver Restricted Account.**

(1) There is created in the General Fund a restricted account known as the "Guaranteed Asset Protection Waiver Restricted Account."

(2) The restricted account shall consist of the money received by the commissioner under this part.

(3) The commissioner shall administer the restricted account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the restricted account to pay for a cost or expense incurred by the commissioner in the administration, investigation, and enforcement of this chapter.

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**31A-6b-301. General requirements for a guaranteed asset protection waiver.**

(1) A person may not issue, market, sell, offer to sell, or otherwise provide a guaranteed asset protection waiver except in compliance with this chapter.

(2) If a creditor assigns, sells, or transfers a finance agreement, a guaranteed asset protection waiver remains a part of the finance agreement.

(3) (a) If a borrower finances or otherwise pays the charge for a guaranteed asset protection waiver, the creditor is liable to the borrower for a benefit due under the guaranteed asset protection waiver regardless of whether the retail seller, administrator, or other person who receives the payment from the borrower remits the charge.

(b) This Subsection (3) may not be construed to prejudice any claim a creditor may have against a retail seller, administrator, or other person who receives a payment from a borrower but fails to remit the payment.

(4) A creditor may require that a guaranteed asset protection waiver that the creditor issues be sold for:

(a) a single payment; or

(b) periodic payments.

(5) The following may not be conditioned on a borrower purchasing a guaranteed asset protection waiver:

(a) the extension of credit;

(b) a term of credit; or

(c) a term of the related vehicle sale or lease.

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**31A-6b-302. Required disclosures.**

(1) A guaranteed asset protection waiver shall disclose the information described in Subsection (2):

(a) in writing; and

(b) in understandable language that is easy to read.

(2) A guaranteed asset protection waiver shall disclose:

(a) the name and address of the initial creditor and the borrower at the time the guaranteed asset protection waiver is executed;

(b) if there is an administrator for the guaranteed asset protection waiver:

(i) the name of the administrator;

(ii) the address of the administrator; and

(iii) a toll-free number to contact the administrator;

(c) the charge for the guaranteed asset protection waiver;

(d) the terms of the guaranteed asset protection waiver, including:

(i) the requirements for receiving the protection of the guaranteed asset protection waiver;

(ii) the conditions imposed by the guaranteed asset protection waiver; and

(iii) the exclusions from the protection of the guaranteed asset protection waiver;

(e) the procedure the borrower must follow, if any, to obtain a benefit under the guaranteed asset protection waiver, including a telephone number and address where the borrower may apply for a benefit under the guaranteed asset protection waiver;

- (f) that the borrower may cancel the guaranteed asset protection waiver;
- (g) the rights the borrower has to a refund under Section 31A-6b-303;
- (h) if the guaranteed asset protection waiver is cancelled or terminated after the preliminary period:
  - (i) the procedures for requesting a refund under Section 31A-6b-303, including that the borrower request a refund in writing in accordance with Section 31A-6b-303; and
  - (ii) the methodology for calculating the refund due, if any;
- (i) that none of the following may be conditioned on the purchase of a guaranteed asset protection waiver:
  - (i) the extension of credit;
  - (ii) a term of credit; or
  - (iii) a term of the related vehicle sale or lease; and
- (j) (i) that a guaranteed asset protection waiver is subject to limited regulation by the commissioner; and
  - (ii) that a complaint regarding a guaranteed asset protection waiver may be submitted to the commissioner.

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**31A-6b-303. Cancellation or termination of a guaranteed asset protection waiver.**

- (1) (a) A borrower may cancel a guaranteed asset protection waiver in accordance with this section.
- (b) A borrower may not waive by contract the borrower's right to cancel a guaranteed asset protection waiver in accordance with this section.
- (c) A guaranteed asset protection waiver terminates on the day on which the related finance agreement terminates.
- (2) (a) A guaranteed asset protection waiver shall provide for a preliminary period of at least 30 days.
- (b) If a borrower cancels a guaranteed asset protection waiver or if a guaranteed asset protection waiver terminates within the preliminary period, the borrower is entitled to a refund of the charge for the guaranteed asset protection waiver as follows:
  - (i) if benefits have not been provided, a full refund; or
  - (ii) if benefits have been provided, a refund to the extent provided for in the guaranteed asset protection waiver.
- (3) (a) If a guaranteed asset protection waiver is cancelled by the borrower or terminates after the preliminary period, to obtain a refund of any portion of the charge for the guaranteed asset protection waiver, the borrower shall request the refund:
  - (i) in a writing provided to:
    - (A) the creditor;
    - (B) an administrator; or
    - (C) another person designated in the guaranteed asset protection waiver;
  - (ii) within 90 days of the day on which an event occurs that terminates the finance agreement if the refund is sought on the basis of termination of a finance agreement; and

(iii) in accordance with any additional terms in the guaranteed asset protection waiver.

(b) If a guaranteed asset protection waiver is cancelled by the borrower or terminates after the preliminary period, but before the term of the finance agreement ends, a borrower is entitled to a refund:

(i) of the portion of the charge for the guaranteed asset protection waiver that under the terms of the guaranteed asset protection waiver is considered unearned; and

(ii) subject to any other terms of the guaranteed asset protection waiver.

(4) (a) If the cancellation of a guaranteed asset protection waiver occurs as a result of any of the following, a refund may be paid directly to the creditor or administrator and applied as provided in Subsection (4)(b):

(i) a default under the finance agreement;

(ii) the repossession of the vehicle associated with the finance agreement; or

(iii) any other type of termination of the finance agreement or guaranteed asset protection waiver.

(b) A creditor may apply a refund described in this Subsection (4) to reduce the amount owed under a finance agreement, unless the borrower can show that the finance agreement is paid in full.

Enacted by Chapter 274, 2010 General Session

**31A-6b-401. Cease and desist order -- Fines.**

(1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(a) order a person who violates this chapter to cease and desist from an act that violates this chapter;

(b) impose a penalty:

(i) up to \$500 per violation; and

(ii) not to exceed the aggregate of \$40,000 in a calendar year for the violations under this chapter of a similar nature; or

(c) take a combination of actions under this Subsection (1).

(2) For purposes of this section, a violation is of a similar nature if the violation consists of the same or similar action, course of conduct, or practice, irrespective of the number of times the action, conduct, or practice occurs that is determined to violate this chapter.

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